IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/10/2004

C O R A M

THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.No.19567 OF 1997

G.Rajamanickam .. Petitioner

-vs-

1. Tamil Nadu Electricity Board,
rep.by the Superintending
Engineer, Trichy Electricity
Distribution Circle (North),
Trichy.

2. The Executive Engineer
(Maintenance & Operation),
TNEB Perambalur, Trichy. .. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of
India praying for the issuance of a writ of mandamus as stated therein.

For petitioner :: Mr.R.Singaravelan
for Mr. V.S.Jagadeesan

For respondents :: Mr.V.Radhakrishnan

:O R D E R

The prayer in the writ petition is to issue a Writ of
Mandamus, calling for the records on the file of the second respondent in
connection with the order passed by him in his proceedings No.Ku Aa No.Se Po/E
Ka/Pe.Ra/Nir/Ni vu 1/Ko O Na.81/96, dated 10.10.1996, confirmed by the first
respondent in his proceedings memo No.229/ADM 4/A.1/F.DP(P)/97, dated
27.6.1997 and quash the same .

2. The petitioner was appointed by direct recruitment as
temporary Casual Labour in the respondent/TNEB; his service was regularised as
helper on 1.4.1977; and, later on, he was promoted to the post of Wireman in
the year 1988. He took leave for five months from 11.7.1995 to 10.12.1995,
i.e. One month Earned Leave as his wife was seriously ill, and four months
Medical Leave as he became seriously ill, and necessary medical certificates
were furnished. But, they were returned, without assigning any reason,
directing him to join duty. It was not known as to how and why his leave was

refused. Taking leave is concomitant to the fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution of India, and it ought not to have been returned without any reason. The leave refusal was due to the instruction of the Superintendent Engineer, who is the Appellate Authority. An enquiry was conducted in which the petitioner denied the charges. But, the Enquiry Officer held that the charges levelled against the petitioner were proved. Thereafter, the show cause notice was served asking him to show cause why he should not be punished. At the time of serving a copy of the Enquiry Officer's Report, the proposed punishment was also mentioned. The second respondent has passed an order simply accepting the findings of the Enquiry Officer; but, no reason has been assigned for confirming the findings of the Enquiry Officer. Further, the punishment is disproportionate to the charges levelled against the petitioner. In the show cause notice itself the punishment ought not to have been mentioned; on that ground alone the order is liable to be set aside. The Appellate Authority has not exercised his powers

properly, but simply endorsed the order of the disciplinary authority. Hence, the order is unreasonable and violative of the provisions of the Constitution including the principles of natural justice.

3. In the counter it has been stated that by Order dated 29.6.1995, the petitioner was transferred to Thuraiyur Division on administrative reasons with specific instructions that no leave of any kind will be granted on the eve of his transfer or after relief. Inspite of the specific instructions, the petitioner applied for Earned Leave from 11.7.1995 to 25.7.1995 and from 12.8.1995 to 30.9.1995, and subsequently extended upto 10.12.1995, producing medical certificate. But, the leave was refused due to non-adherence to the instructions issued to him. As per Clause 7 of the Tamil Nadu Electricity Board Leave Regulation, leave cannot be claimed as a matter of right. It is the discretion of the authority to grant, refuse or revoke leave, at any time, according to the exigencies of service. This Court has upheld the above contention in W.P.No.1860 of 1986. The petitioner was transferred on administrative grounds so as to avoid departmental disciplinary action against him. The charges were framed against the petitioner for his unauthorised absence from duty from 11.7.1995. In the enquiry, the charge of wilful disobedience was proved. Thereafter, the show cause notice was issued proposing the punishment of stoppage of increment for one year without cumulative effect. The past records of the petitioner was also considered before imposing the punishment. The petitioner did not submit any reply to the show cause notice. Therefore, there is no violation of the rules. Hence, the writ petition is devoid of merits and the same is liable to be dismissed.

4. The learned counsel for the petitioner submitted that when the enquiry was conducted by an authority other than the disciplinary authority, the disciplinary authority shall forward the finding of the enquiry officer and seek the views of the delinquent. Only after getting such a reply, the second show cause notice can be issued. But in this case, the finding of the enquiry officer was sent along with the second show cause notice, and hence it is illegal and vitiates the entire proceedings.

In support of his contention, the learned counsel for the

petitioner relied upon the judgment in MANAGING DIRECTOR, ECIL v.. B. KARUNAKAR [AIR 1994 SC 1074], where the Supreme Court has held in para 24 as follows:

 It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offend Arts.14 and 21. It is well settled law that principle of natural justice are integral part of Art.1 4. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a postmortem certificate with purifying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Arts.14, 21 and 311(2) of the Constitution, but also, the principles of natural justice. The contention on behalf of the Govt./ Management that the report is not evidence adduced during such enquiry envisaged under proviso to Art.31(2) is also devoid of substance. It is settled law that Evidence Act has no application to the enquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with Indian Evidence Act, though the essential principle of fair play envisaged in the Evidence Act are applicable. What was meant by 'evidence' in the proviso to Art.311(2) is the totality of the material collected during the enquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed, by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both."

In that case, the learned Counsel contended that non-supply of the report to the delinquent caused grave prejudice. The Supreme Court ultimately held that - it should thus conclude that the supply of enquiry report is an integral part at the penultimate stage of the enquiry before the disciplinary authority considers the material and the report on the proof of the charge and the nature of the punishment to be imposed. Non-compliance is denial of reasonable opportunity, violating Art.311(2) and unfair, unjust and illegal procedure offending Arts.14 and 21 of the Constitution and the principles of natural justice.

5. The learned counsel for the petitioner also referred to the un-reported judgment of this Court in WP No.16348 of 1995, dated 15.3.20 02 [RAJENDRAN v.. THE MANAGIND RIECTOR, DHEERAN CHINAMALAI TRANSPORT CORPORATION, TIRUCHIRAPALLI-1]. In that case, this Court has set aside the order of dismissal for non-furnishing of a copy of the Enquiry Officer and remitted the matter back with certain observations. The learned Counsel therefore submitted that the same should be followed in this case also.

6. In reply, the learned counsel for the respondents submitted that Karunakar s case was clarified by the Supreme Court in STATE OF

U.P. v.. HARENDRA ARORA [(2001) 6 SCC 392]. In that case, the Supreme Court has held as follows:
" Thus, from the case of ECIL (1993) 4 SCC 727 it would be plain that in cases covered by the constitutional mandate i.e. Article 311(2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. If for infraction of a constitutional provision an order would not be invalid unless prejudice is shown, we fail to understand how requirement in the statutory rules of furnishing copy of the enquiry report would stand on a higher footing by laying down that question of prejudice is not material therein."
Referring to this, the learned counsel for the respondents submitted that non-furnishing of the report of the Enquiry Officer is not fatal to the proceedings unless prejudice is shown to have been caused to the delinquent. In this case, no prejudice has been caused to petitioner. In the absence of any prejudice caused to him, nonfurnishing of a copy of the Enquiry Officer' Report does not vitiate the entire proceedings.

7. The contention of the learned counsel for the petitioner is that even at the time of issuing second show cause notice the authorities have arrived at a conclusion that the charges levelled against the petitioner have been not proved. Therefore, the second show cause notice was given not with an open mind, and hence, it is illegal and liable to be set aside. For this proposition, the counsel mainly relies upon the judgment of the single Judge of this in WP No.16348 of 19 95 (stated supra). In the order of the learned single Judge it is found that the Court came to the conclusion that a "final decision" was already taken when issuing the second show cause notice. But, in the present case in the second show cause notice it is specifically stated that on the basis of Enquiry Officer's report the disciplinary authority has come to "temporary" conclusion. The words used are jw;fhypf Kot[@, which means it is not a final decision but only a temporary decision.

8. The main contention of the learned counsel for the petitioner is that after Karunakar's case, the very fact that the enquiry report was not sent, without taking a decision regarding the finding of the Enquiry Officer, vitiates the entire proceedings. When the second show cause notice was served along with the Enquiry Officer's report holding that a preliminary conclusion was taken on the findings, vitiates the safe guards provided under Art.311 of the Constitution.

9. This argument of the learned counsel for the petitioner is not acceptable. The learned single Judge in WP No.16348 of 1995 also extracted the following passage from Karunakar's case -
" Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."
Further, Karunakar's case has been clarified by the Supreme Court subsequently in STATE OF U.P. v.. HARENDRA ARORA [(2001) 6 SCC 392] where it has been

held that -
"When no prejudice is shown due to non furnishing of enquiry report, it does not vitiate the enquiry proceedings."
In this present case no prejudice has been shown by the petitioner. Therefore, the non-furnishing of enquiry report without accompanied by the second show cause notice does not, in any way, make the order illegal. Therefore, furnishing of enquiry report along with the second show cause notice is not illegal.
10. The next contention of the learned counsel for the petitioner is that the Appellate Authority has not passed a considered order; it is only a non-speaking order and therefore the order of the Appellate Authority is liable to be set aside.

11. It is a well established principle that only when the Appellate Authority differs from the conclusion arrived at by the disciplinary authority, reasons shall be given for such modification. If, on the other hand, when the Appellate Authority concurs with the findings of the disciplinary authority, the order of the Appellate Authority does not become invalid on the ground that reasons have not been adduced for arriving at that conclusion. Therefore, even assuming that the Appellate Authority s order is not a speaking order, yet it does not affect the validity of the Order. It is not impermissible for the Appellate Authority to pass orders without giving reasons or to pass a non-speaking order when it concurs with the disciplinary authority. Under those circumstances, the reasons giv en by the disciplinary authority is deemed to be given by the Appellate Authority also.

12. But, on the other hand, in this case the Appellate Authority has also given reasons. The Order of the Appellate Authority, dated 27 .6.1997, reads as follows:
The contents of the Appeal of the delinquent were examined carefully together with the connected records by the Superintending Engineer/ North/Trichy. In his appeal petition, the individual has not adduced any fresh points to mitigate the charges framed against him.
Hence, the undersigned has come to the conclusion that there is no reason to interfere into the final orders already issued to him by the Executive Engineer/O&M/Perambalur. Accordingly the undersigned rejects the appeal petition.

From this, it is seen that the Appellate Authority has examined the contents of the connected records and only after satisfying with the conclusion arrived at by the disciplinary authority he has passed this order. Further, he has stated that there is no new ground raised by the appellant. Therefore it is not as if the Appellate Authority has passed orders without application of mind; hence the order does not suffer from non-application of mind. It cannot be forgotten that these appellate authorities are not passing judicial orders. It is only administrative order exercising quasi-judicial power. They cannot be expected to pass orders as passed by the judicial officers. Further, this order is not in fact a non-speaking order. Hence, there is no ground to interfere with the order passed by the Appellate Authority.

13. No other point was argued by the learned counsel for the petitioner. For the foregoing reasons, the writ petition is devoid of merits and hence the same is dismissed. No costs.

Index :Yes
Internet: Yes

pb

To

1. Tamil Nadu Electricity Board,
rep.by the Superintending
Engineer, Trichy Electricity
Distribution Circle (North),
Trichy.

2. The Executive Engineer
(Maintenance & Operation),
TNEB Perambalur, Trichy.